Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

JOHN CALDWELL TIMMONS,
Petitioner

v.

RAK REE ENTERPRISES, Inc.,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Supreme Court of Ohio

PETITION FOR A WRIT OF CERTIORARI

John Caldwell Timmons
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70 pp.

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. The State of Ohio requires the submission and deposit of a supersedeas bond to obtain a stay while appeals are taken from Orders of Sale and Judgment Decrees in Foreclosure. Would this not therefore create a violation of an individual's right to due process and equal protection, guaranteed by the Fourteenth Amendment, based solely on economic condition?

2. Does Ohio law preclude equitable relief when restrictions are placed upon appeals of confirmation orders. Is there a conflict in the REED v. Radigan and Third National City Bank of Circleville v. Speakman?

3. Can an "allowed claim", established by a bankruptcy court, have the "full faith and credit" for judgments, or, once a bankruptcy case is dismissed without discharge of debt, does that court's jurisdiction over the person end with the dismissal?

LIST OF ALL PARTIES

Pursuant to S. Ct. Rule 14.1(b), Petitioner supplies the list of all parties at Appendix, p.

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PETITION FOR A WRIT OF CERTIORARI

CITATIONS TO OPINIONS BELOW

Pursuant to S.Ct. Rule 14.1(d), the Petitioner submits the following citations of the of the official and unofficial reports of the opinions and orders entered in this case below:

RAK REE Enterprises, Inc. v. Timmons, (Pickaway 1995), Tables, 648 N.E. 2d 510, Emergency appeal not allowed;

RAK REE Enterprises, Inc. v. Timmons, (Pickaway 1995), Tables, 654 N.E. 2d 510, Jurisdiction denied;

RAK REE Enterprises, Inc. v. Timmons, (Pickaway 1995), 101 Ohio App. 3d 12, 654 N.E. 2d. 1370, District Opinion

JURISDICTIONAL STATEMENT

This is a petition for certiorari with regard to a decision of the Supreme Court in the State of Ohio to refuse jurisdiction for the Petitioner's appeal on September 3, 1997. This Court has jurisdiction of this petition pursuant to 28 U.S.C. Section 1257(a) and S.Ct. Rule 10(a) and 10(c).

STATUTORY PROVISIONS INVOLVED

Pursuant to S.Ct. Rule 14.1(f), Petitioner hereby sets out in full the text of Rule 54(B) of the Ohio Rules of Civil Procedure:

(A)

B) **Judgment upon multiple claims or involving multiple parties.** When more than one claim fore relief is presented in an action whether as a claim, counter claim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Petitioner sets out a shortened portion of the Fourteenth Amendment which has perspective in the case herein:

The Fourteenth Amendment to the Constitution of the United States of America forbids an individual state from making or enforcing any law that abridges the privileges and immunties of citizens of the United States; and secures all "persons" against any state action which results in the deprivaion of life, liberty, or property without due process of law, or in denial of the equal protection of the law.

STATEMENT OF THE CASE

On June 18, 1993, the Ohio Court of Common Pleas in Pickaway County filed a Judgment Decree in Foreclosure for Case No. 86-CI-337. The mortgage was in default and the first and second mortgagees had elected to foreclose upon the property. The property was sold Tuesday, March 29, 1994, pursuant to an Order of Sale or Writ of Execution issued by the Clerk of Courts. However, this court had failed to adjudicate the claim for the first mortgagee and only listed the summary judgment for the second mortgagee on the decree. The sale was further complicated by a defect in the Notice of Sale that incorrectly advertised the sale for Tuesday, March 28, 1993. The defendant-mortgagor filed separate motions for stay based upon the defect in the advertisement and the court's failure to adjudicate the first mortgagee's claim, but the property was sold without response to the motions. The errors were further compounded when, to the detriment of the defendant, both the trial and appellate courts sought a mechanism to legitimize the sale.

COURT OF COMMON PLEAS FORECLOSURE

CASE NUMBER 86-CI-337

On April 19, 1979, John Caldwell Timmons, herein the Petitioner pro se, purchased two hundred thirty four acres (234 acres), from an Ohio General Partnership named RAK REE Enterprises, Inc. The contract specified that thirty per cent of the purchase price plus a first mortgage would be conveyed to RAK REE in order to transfer the deed for the property. The mortgage payments were calculated utilizing a thirty-year amortization with a declining principal balance but specified that the remaining principal balance would become due and payable with the seventh year's mortgage payment; a balloon payment. Farm Credit Services (FCS), then called Production Credit Association (PCA), advanced

the down payment in exchange for a second mortgage on the land and a first mortgage on Petitioner's farm machinery.

Timmons experienced flooding, weather problems, declining land prices, and escalating interest rates during this period and was unable to arrange for refinancing and could not satisfy the terms of his contract when the mortgage and balloon payments matured in the spring of 1986. The first mortgagee filed a complaint in foreclosure on July 21, 1986 and the second mortgagee followed with a cross-complaint. Timmons filed an answer and offered to return the property to RAK REE, to satisfy the terms of the purchase contract, but the offer was declined. Timmons filed for protection under U.S.C. Title 11, Chapter 12 of the Bankruptcy Code on December 13, 1986.

BANKRUPTCY CASE NUMBER 2-86-05021

Just before the bankruptcy confirmation hearing, RAK REE offered to reduce the outstanding principal and interest owed on the land to one hundred twenty thousand dollars ($120,000.00) in exchange for approximately thirty-four acres (34 acres) of frontage on United States Route 23 (about six miles south of Columbus, Ohio). Timmons accepted the offer, granted further concessions, and agreed to certain restrictions at a continued hearing.

The attorneys representing Timmons, RAK REE, and Farm Credit Services, agreed to the novation and, to satisfy the statute of frauds, placed their signatures on the order that confirmed the First Amended Plan of Reorganization. The court approved the novation and confirmed the Debtor's plan of reorganization. Deeds for two individual parcels of property were voluntarily filed by RAK REE March 28, 1988. The transfer fees, paid by Timmons, were calculated

from the amount of the debt reduction with an acreage value assigned for the transfer.

Bankruptcy Case No. 86-54857 was dismissed without discharge of debt on April 22, 1992. Six payments to RAK REE and four payments to Farm Credit Services were made during this attempted reorganization, but crop failure and weather associated difficulties continued into this period and the debtor was unable to complete the scheduled payments.

BANKRUPTCY CASE NUMBER 2-92-04161

Timmons felt that reorganization was still possible if the weather patterns were to change; normal production, prices, and yields would permit the restructuring of the debt. FCS' claim would now be established at 100% whereas the RAK REE debt would not be affected by the dismissal. Timmons filed a second Chapter 12 Petition for Reorganization, Bankruptcy Case Number 2-92-04161, on June 18, 1992.

Another flood occurred in late June of that year which destroyed crops and extinguished Timmons' hope for rapid recovery. The bankruptcy court also denied confirmation of the debtor's first plan of reorganization and, faced with an untenable present circumstance with an uncertain future, Timmons decided not to present an amended plan of reorganization. The case was dismissed October 7, 1992 with sanctions for failure to prosecute pursuant to Section 109 (g) of the bankruptcy code.

RENEWAL OF ACTION IN STATE COURT

On November 9, 1992, RAK REE renewed foreclosure with a motion for summary judgment to the Ohio

Court of Common Pleas in Pickaway County. This Creditor claimed that Timmons still owed them about two hundred twenty-four thousand dollars (~$224,000.00). Their previous claim in state court, one year earlier, had been for about fifty nine thousand dollars (~$59,000.00) while they claimed seventy-five thousand dollars (~$75,000.00) during the Debtor's second attempt at reorganization. Timmons filed an objection to the RAK REE claim but did not oppose Farm Credit Services' motion for summary judgment on their claim for one hundred thirty thousand, two hundred seventy-one dollars and eighty-five cents ($130,271.85). A summary judgment was subsequently entered in favor of FCS on April 7, 1993 for the sum specified in the motion.

Several continuances were granted RAK REE until a hearing was actually held June 14, 1993. RAK REE presented their claim for about two hundred thirteen thousand dollars (~$213,000.00), Timmons presented evidence that the RAK REE debt was only about fifty thousand dollars plus interest (~$50,000.00), while the Court of Common Pleas in Pickaway County tried to promote a compromise for seventy five thousand dollars ($75,000.00). This hearing was also continued to enable Timmons the opportunity to obtain testimony from the Chapter 12 Trustee in regard to the events and the payments made RAK REE during the first reorganization. The Court had initially approved a motion to quash subpoenas, filed by the Trustee's Attorney, after copies of cancelled checks were provided the Defendant. However, the court later required the Trustee's testimony at a continued hearing, because, at the June 14 hearing, one of RAK REE's principals could not identify his signature on copies of the checks and could not remember what payments had been received from the Trustee.

The continued hearing on RAK REE's motion for summary judgment was held July 23, 1993 with testimony

from the Bankruptcy Trustee. At the conclusion of the hearing, Farm Credit Services' Attorney announced that a sale date had been established for about five weeks hence and that advertising for the sale would begin that week. Timmons objected and requested a stay until after the RAK REE claim was established. The Court announced from the bench that a stay of judicial sale could be obtained if the Defendant were to deposit the property's appraised value, two hundred thousand dollars ($200,000.00), for a supersedeas bond. The Court then required RAK REE to file a brief in support of their motion for summary judgment and for Timmons to respond, within the following seven days, with a memorandum in opposition to summary judgment.

RAK REE filed their supplemental memorandum in support of summary judgment on July 30, 1993. This creditor attempted to justify a judgment for two hundred thirteen thousand, nine hundred fifty-five dollars and thirty-seven cents ($213,955.37). This seemed to be quite inflationary when viewed from the perspective that their original claim had been for about fifty-nine thousand dollars (~$59,000.00) and their claim in bankruptcy court had been seventy five thousand dollars ($75,000.00) the previous year.

Timmons filed a supplemental memorandum in opposition to summary judgment on August 6, 1993. He attempted to demonstrate that the RAK REE claim had been reduced to the sum of fifty thousand, five hundred thirty-three dollars and forty-five cents ($50,533.45) plus accrued interest of about sixteen thousand dollars (~$16,000.00). The calculations were based upon the novation (offer and acceptance), the value of the property transferred (performance and consideration), and the payments made by the Chapter 12 Trustee (partial satisfaction). One hour later, Timmons filed a pro se petition for reorganization pursuant to U.S.C. Title 11, Chapter 12 of the Bankruptcy Code.

BANKRUPTCY CASE NUMBER 93-54857

Dual bankruptcy court valuation and confirmation hearings were held December 13, 1993. RAK REE still attempted to claim approximately two hundred thirteen thousand dollars (~$213,000.00) even though their claim had only been seventy-five thousand dollars (~$75,000.00) for Bankruptcy Case Number 2-92-04161.

Testimony from RAK REE was presented and, after a heated exchange between the Court and RAK REE's attorney, the Court allowed a claim for one hundred twenty thousand dollars ($120,000.00). The Court announced that this sum would be used in the following confirmation hearing and that Timmons could file a motion for reconsideration, with new evidence for determination of the claim, at a later date. Timmons had intended to present the terms for the novation, the cancelled checks, and the evidence of property transfer upon cross-examination of RAK REE's witness and was startled when the court declared a recess.

The Court reconvened with testimony in regard to feasibility and the issue of "bad faith" presented by the Bankruptcy Trustee (previously subpoenaed by Timmons in state court) and RAK REE's Attorney. Timmons had attempted to establish that the issue of bad faith was limited to fraud, concealment of assets, criminality, or other non-disclosure issues and could not be associated with previous attempts at reorganization. The court determined, however, that multiple filings were indicia of bad faith and dismissed the case for bad faith and lack of feasibility with sanctions pursuant to section 109 (g) of the Bankruptcy Code.

FEDERAL APPEALS

Appeals were separately taken from the order of dismissal, Case Number C-2-94-163, and the order that established the allowed claim for RAK REE at one hundred twenty thousand dollars ($120,000.00), Case Number C-2-94-164. Timmons also filed a motion for stay, pending appeal, with the bankruptcy court. This court denied the stay and, upon a subsequent motion, the United States Court of Appeals for the Southern District of Ohio also refused to grant a stay. Timmons continued to the United States Court of Appeals for the Sixth Circuit with an appeal, patterned after the Cohen exception to finality, pursuant to U.S.C. 28 Section 1291 although the jurisdiction to entertain the appeal should probably have been cited pursuant to U.S.C. 28 Section 1292 (a)(1). The farm was sold at judicial sale, in the interim, and the appeals to the Sixth Circuit were dismissed because the issue regarding stay of sale had been rendered moot.

FIRST JUDICIAL SALE

On March 24, 1994, Timmons filed a motion for stay of sale with the Ohio Court of Common Pleas in Pickaway County. The motion was in response to the defect in the Notice of Sale that gave Tuesday, March 28, 1993 for the sale date; the sale would have occurred more than one year earlier. Whether the sale was held Monday the twenty-eighth or Tuesday the twenty-ninth might also have caused confusion to some interested parties.

A second motion for stay of sale was filed with the trial court on March 28, 1994; Timmons correctly stated that no judgment for the first mortgage holder had been established which violated Rule 54(b) of the Ohio Rules of Civil Procedure. The motion had copies of the Notice of Appeal to the Sixth Circuit appended and the Defendant argued that appeals were being taken from the order of

dismissal and the order which established the allowed claim for RAK REE at one hundred twenty thousand dollars ($120,000.00). The Defendant believed that to continue with a judicial sale, while these appeals were pending, was improper. There was no response to either motion.

The judicial sale was held Tuesday, March 29, 1994. The Ohio Department of Natural Resources was the successful purchaser with a bid of two hundred five thousand dollars ($205,000.00). However, the purchaser was later identified in the docket as Ducks Unlimited, a national conservation group committed to hunting and expansion of waterfowl populations. Prior to the sale, the Trial Court filed an entry waiving the requirement for a ten per cent down payment if the successful purchaser was the State of Ohio.

AGREED ENTRY

Immediately after the sale, RAK REE and Farm Credit Services filed what was termed an agreed entry. This document described the understanding reached between the creditors and established how the sale proceeds were to be distributed. After court costs, land taxes, and sheriff's poundage, RAK REE would receive seventy five thousand dollars ($75,000.00) which was to be applied to their "judgment" of one hundred twenty thousand dollars ($120,000.00) established in bankruptcy court. The remainder would go to FCS, the second mortgagee, up to the extent of their claim established by summary judgment. Any funds remaining would then go to RAK REE to satisfy the rest of their claim for one hundred twenty thousand dollars ($120,000.00). This joint entry was approved and journalized the same day, and was the entry from which Timmons filed a Notice of Appeal, Case Number 94-CA-8; the Defendant considered the entry to be a subterfuge intended to substitute for an Order of Confirmation.

On April 14, 1994, RAK REE filed a motion for deficiency judgment for the amount of forty-five thousand dollars ($45,000.00). The calculations were based upon the limited return of seventy-five thousand dollars ($75,000.00) from the sale, as stipulated in the agreed entry, and their "judgment" from the bankruptcy court for one hundred twenty thousand dollars ($120,000.00). The court awarded RAK REE a deficiency judgment for forty-five thousand dollars ($45,000.00) on April 14, 1994, the same day the motion was filed. RAK REE followed with a supplement to the motion on April 20, 1994, when they filed a certified copy of the bankruptcy "judgment".

Timmons filed a Notice of Appeal from the entry awarding the deficiency judgment, Case Number 94-CA-10, stating that to use an allowed claim from bankruptcy court as a judgment, after the sale, was improper. The claim for RAK REE should have been identified on the Judgment Decree in Foreclosure filed almost seven months before the bankruptcy "judgment". Timmons did not remember this decree, however, because he kept referring to a defect in the "Order of Sale" which did not have the signature of the court and did not carry a time stamp to indicate when the document was filed. The defendant was actually referring to the Clerk of Court's Writ of Execution that carried the title "Order of Sale"; the Defendant had either forgotten or had not seen the Judgment Decree in Foreclosure that had been filed the previous year.

The sale was confirmed at a hearing held May 19, 1994. The bid had now been transferred from Ducks Unlimited, an interested party in the previous appeals, to another conservation group, the Wildlife Federation of America. Three days after confirmation, Wildlife Federation of America paid two hundred five thousand dollars ($205,000.00) for the property. On May 25, 1994, RAK

REE filed a motion for the distribution of a joint payee check, which was immediately approved and journalized. The funds from the sale were then distributed according to the "Agreed Entry" filed March 29, 1994. On June 15, 1994, Timmons filed a Notice of Appeal from the Order of Confirmation, Case Number 94-CA-14. The appeal was founded upon the absence of judgment for RAK REE and the defect in the Notice of Sale; either of which should have obviated confirmation.

On November 8, 1994, Farm Credit Services filed another motion for summary judgment on their third cause of action. The sale proceeds were also insufficient to satisfy their judgment, and this creditor now sought to satisfy the deficiency with a Writ of Possession and sale of the Defendant's farm machinery. The court held a hearing on December 14, 1994, granted the deficiency judgment, and allowed the possession of the machinery to satisfy the deficiency. Timmons filed a Notice of Appeal from that order on January 12, 1995, Case Number 95-CA-5, and sought a stay from the Fourth District Court of Appeals by filing a motion in the cases already before that court.

On February 6, 1995, the Ohio Court of Appeals for the Fourth District ruled that the entry of the allowed claim ("judgment") from bankruptcy court was properly handled and that the deficiency judgment itself became the final appealable order upon confirmation of the judicial sale. This court's entry indicated that Timmons had failed to timely object to the motion for deficiency judgment and was therefore time barred from challenging the judgment. Timmons had timely filed an appeal from the order which approved the deficiency judgment, but had been denied the opportunity to object to RAK REE's motion for deficiency judgment because the judgment had been entered the same day the motion was filed. The Fourth District Court of

Appeals did reverse the Order of Confirmation for the Judicial Sale, based upon the defect in the Notice of Sale, and remanded the case to the trial court for "further proceedings".

One week later, on February 13, 1995, the second mortgagee, Farm Credit Services, filed a praecipe for Order of Sale on Remand. The Clerk of Courts in Pickaway County promptly filed an "Order of Sale" which was actually the Clerk's Writ of Execution. The "further proceedings" specified in the appellate court's entry should have necessitated a legal notice and hearing in regard to the priority and claims for the various parties. The Ohio Department of Natural Resources had, by now, purchased the farm from Wildlife Federation of America for two hundred five thousand dollars ($205,000.00); the purchase price from the sale. This state agency should have been given priority for the distribution of sale proceeds from a second sale and the claims of the other creditors should have been identified with their priorities; in other words, a new Judgment Decree in Foreclosure was necessary. The Clerk of Courts refused to furnish Timmons a copy of the "Order of Sale" because this order was only a Writ of Execution and the only copy was the one now in the possession of the Sheriff. Timmons obtained a copy of this "Order of Sale" from the Sheriff of Pickaway County and filed a Notice of Appeal, Case Number 95-CA-2, from the order that was, in actuality, a writ.

A motion for reconsideration of the Fourth District Court's decision was timely filed. The lack of a judgment before the sale, the fact that the bankruptcy "judgment" was still under appeal in the Federal Appellate System, and the issue of responsibility for advertising and other costs, associated with a voided judicial sale, were presented for examination. Timmons did not receive a response to the motion and an appeal was taken to the Supreme Court for the State of Ohio.

A motion for stay was filed with the trial court and then withdrawn after the appeal to the Supreme Court of Ohio was perfected. The trial court had previously refused to grant a stay until a supersedeas bond for two hundred thousand dollars ($200,00.00) was posted. Because the bond was improbable if not impossible, the Defendant had sought another mechanism to stay a second judicial sale until the RAK REE claim was determined. Timmons argued at a hearing in the trial court, without success, that jurisdiction for the case still rested with the Supreme Court of Ohio and until the issues were resolved or dismissed, the trial court could not proceed. The issue was also raised that a new Judgment Decree in Foreclosure was necessary before the clerk of courts could issue a Writ of Execution. These issues were ignored and the court allowed the judicial sale to proceed.

THE SUPREME COURT OF OHIO

Case Number 95-609 was filed in the Supreme Court of Ohio on March 23, 1995. Timmons sought review of the lack of a judgment for RAK REE that violated Rule 54(b) of the Ohio Rules of Civil Procedure and also asked the court to determine the assignment of court costs and other fees associated with a voided judicial sale. Timmons filed a Motion for Emergency Stay with this court because the trial court was again proceeding to a judicial sale on remand.

On April 25, 1995, by a vote of four to three, the Supreme Court of Ohio denied Timmons' motion for stay pending appeal. The court later refused to accept jurisdiction for the appeal and the Court refused to accept jurisdiction for the appeal which was dismissed June 28, 1995.

SECOND JUDICIAL SALE

On May 9, 1995, the property was again sold at judicial sale. The successful purchaser was again the Ohio Department of Natural Resources with a bid of one hundred seventy five thousand dollars ($175,000.00). The Assistant Attorney General representing Natural Resources did file a Notice of Lien and subrogated interest, in the sale of the property, the day before the sale. Section 2329.46 of the Ohio Revised Code provides for the subrogation of the rights of the creditor to the purchaser at a judicial sale that is later set aside. The money paid by the purchaser to the creditor need not be returned but liens and other assignments would be subrogated to the purchaser at a void judicial sale.

Timmons returned several times to check the file for an order confirming the sale. The reply was always that the order of confirmation had not yet been filed. The Defendant came to the conclusion that the court did not have to confirm the sale because there was no change in status for the case. Additional court costs, advertising fees, and reconciliation of the lower bid from the second sale compared to the first sale were the only variables. The purchaser was the same, the deed had already been filed, and the court had no reason to confirm the second sale. A hearing was held at which the court ordered the defendant to pay court costs and allowed the State of Ohio a deficiency judgment for the difference between the first and second sale prices.

CONTINUED FEDERAL APPEALS

On January 20, 1995, the United States Court of Appeals for the Southern District of Ohio filed an entry for the consolidated appeals from bankruptcy court. This court affirmed the dismissal but declined review of the RAK REE "judgment". On May 19, 1995, in response to a Motion for Rehearing and Reconsideration, this court again denied the Appellant the review of the RAK REE "Judgment". The

reasoning was that the dismissal was affirmed and if a state court had used the bankruptcy judgment, reversal of the judgment on appeal, in the federal courts, would not affect the state court decision.

Timmons appealed to the United States Court of Appeals for the Sixth Circuit, Case Numbers 95-3201 and 95-3203, stating that the RAK REE judgment had been rendered in Federal Court and the Appellant had the right to have the judgment reviewed by the federal appellate courts. On February 12, 1996, the Sixth Circuit affirmed the bankruptcy courts order of dismissal and refused the review of the RAK REE judgment. Their reasoning was patterned after the district court's argument that the reversal of the judgment would have no meaning in the state courts and that the issue of the RAK REE Judgment was a matter to be decided by the state courts.

SECOND FORECLOSURE - CASE NUMBER 96-CI-41

On April 29, 1996, RAK REE filed an amended second complaint in foreclosure which asked the Ohio Court of Common Pleas in Pickaway County to allow the Plaintiff the right to foreclose on certain specific properties inherited by Timmons and other family members. By adding the other family partners in a new complaint, the creditor sought to legitimize his right to foreclose upon their property. The Plaintiff stated that the owners were Tenants in Common and therefore the property was subject to foreclosure. The original complaint stated that Timmons had finally lost all of his appeals of the bankruptcy court judgment in the Sixth Circuit and that this creditor was now entitled to collect upon their deficiency judgment.

Timmons denied that RAK REE had the right to collect from these properties (specific partnership property)

and stated that he had neither won nor lost his appeal of the RAK REE judgment in the federal appellate courts. A motion for Relief from Judgment pursuant to Rule 60(b)(4) of the Ohio Rules of Civil Procedure was filed along with a counterclaim based upon the overpayment of seven thousand seven hundred forty-nine dollars and sixty cents ($7,749.60) from the proceeds from the first sale of property.

Timmons argued that an appellant had the right to have all Final Orders, Judgments, and Decisions, rendered by a bankruptcy court, reviewed on appeal to a district court. It was also an appellant's right to have all Final Orders, Judgments, and Decisions, rendered in a district court, reviewed on appeal to a circuit court. It would therefore logically follow that because the RAK REE "Judgment" was denied review by the district court and the Sixth Circuit, the judgment was interlocutory and not final. Because the "Judgment" lacked finality in the bankruptcy court, it could not now be used as the basis for a deficiency judgment; the judgment had been vacated or no longer had prospective application.

Timmons later decided that relief from the deficiency judgment must be obtained in the original foreclosure case and filed an identical motion for relief in that case. The motion was denied and the Defendant filed an appeal from the denial, Case Number 97-CA-24, to the Ohio Court of Appeals for the Fourth District.

APPEAL FROM THE ORDER OF CONFIRMATION FOR A SECOND JUDICIAL SALE–CASE NUMBER 96-CA-46

Timmons "found" the Order of Confirmation for the second judicial sale of his property while researching the original foreclosure file, Case Number 86-CI-337, in preparation for his Motion for Relief from Judgment in the

case which had awarded the deficiency judgment. Ohio law states that an appeal must be taken from an order within thirty (30) days after entry of the order. The Ohio Appellate Rules state, however, that if an entry is not sent to all parties and notation attesting to service is not placed in the appearance docket within the three days prescribed for such service, the time for appeal is thirty days after service. Timmons filed an appeal from the order of confirmation for the second sale, Case Number 96-CA-46, on December 27, 1996. This order had been issued on June 26, 1995 and had evidently not been available to the Defendant when he was actively searching for the order at the earlier date.

The Fourth District Court of Appeals ruled that the order of confirmation is not a final appealable order and because the order was not final, they had no jurisdiction to consider the appeal. The only final order from which an appeal could be taken would be from the Judgment Decree in Foreclosure or order of sale.

Timmons filed an appeal from this dismissal with the Supreme Court of Ohio, Case Number 97-1040. The Appellant tried again to present his case that there was no valid judgment for RAK REE before the first sale and there was no Judgment Decree in Foreclosure or Order of Sale from the Court before the second sale. The trial court had confirmed, but had never ordered or authorized, the sale. On September 3, 1997, the Supreme Court declined jurisdiction to hear the case.

BANKRUPTCY APPELLATE PANEL

CASE NUMBER 97-8024

An appeal was taken from the order which approved the Bankruptcy Trustee's Final Report and which closed

Bankruptcy Case 93-54857. The Trustee had listed all claims filed in the case as having been allowed. Some claims, from administrative agencies, were allowed even though they had been filed after the case was dismissed. The Bankruptcy Appellate Panel Decision stated that the issue of the RAK REE claim was rendered moot when the bankruptcy case was dismissed. The Appellant presented this decision to the Fourth District and the trial court and argued that the "claim" allowed in a dismissed bankruptcy case was without value in a court of common pleas and could not be used as the foundation for a deficiency judgment.

EXECUTION SALE

A praecipe for a writ of execution for the sale of the Defendant's machinery and chattels was filed August 20, 1997. Notice and hearing was not afforded the Defendant before the writ was issued and the Plaintiff did not obtain the prior approval from the Court of Common Pleas to sell the machinery.

The trial court denied Timmons' motion for stay of execution but the Fourth District Court of Appeals did grant a stay on November 19, 1997; one day before the sale. However, the stay was conditioned upon the posting of a bond for one hundred thousand dollars ($100,00.00). This seemed somewhat excessive when viewed from the standpoint that the deficiency judgment, now under attack with the motion for relief from judgment, was for only forty-five thousand dollars ($45,000.00). The Appellant had argued from his motion that the property should satisfy the bond requirement until a decision was reached on the appeal. The machinery was sold November 20, 1997.

REASONS FOR GRANTING THE PETITION

The Supreme Court of Ohio failed to see a constitutional issue and declined to accept jurisdiction for the case. However, the Petitioner believes that he was deprived of due process when the Ohio Court of Common Pleas continued to a judicial sale, the first time, without adjudicating the debt owed the first mortgagee. The property was sold a second time without a new order of sale or judgment decree in foreclosure and with an "allowed claim" from the bankruptcy court which was to substitute for a judgment.

Every man has the right to know his debt and object to a claim in a foreclosure action if the claim is not supported by fact and law. The state district court refused to hear the appeal because thy had used a local case which does deny an individual the right to collaterally appeal a judgment out of time with appeals from orders made past the bar date for appeals. However, in this case the court did not adjudicate but rather tried to legislate and bully what the court thought appropriate and not from the law.

Civil Rule 54(B) is directional and controlling. The judgment for FCS was a final judgment for this creditor and could not be challenged with an appeal from a confirmation order. However, hearings were being held and briefs were being filed almost three months after a Judgment Decree in Foreclosure had been journalized. The FCS claim was a valid judgment upon the facts; the RAK REE "allowed claim" is a sham and a fraud.

The denial of a stay or the fixing of an exorbitant supersedeas bond would appear to be prejudicial and discriminatory and subject to judicial abuse. The district court fixed the sum of one hundred thousand dollars ($100,000.00) to afford the Appellant relief from an unjust sale of his machinery. The implements should have been

bond for itself and a moderate bond should have been fixed which was affordable but which would compensate the creditor for his interest costs for the pendency of an appeal if the appeal was lost. The two hundred thousand bond to stay the sale of the Petitioner's farm is also unconscionable. The property probably would have returned more with a later sale and the delay of two months would not have necessitated alarm. It would seem that the courts were trying to punish and obstruct the Petitioner from further appeals by denying a reasonable bond. If an individual has the means to deposit a large sum as bond, then he has been afforded the opportunity to seek his justice. The individual not able to provide bond is not allowed the opportunity to seek relief from improper judgments and his property is sold. This is judicial discrimination and deprivation of property at its finest.

An order confirming a judicial sale has long been considered a final order that was appealable. *Reed v Radigan, (1884), 42 Ohio St.* 292 solves the problem correctly. "A confirmation order is a final appealable order because it operates to divest the mortgagor of his title, which is a substantial right, in a special proceeding." ---. "The judgment entry determines the amount due which serves as the basis for redemption on the one hand or distribution of sale proceeds on the other hand." It was the denial of the right to a judgment and the potential to redeem the property without judicial sale which must now be considered a violation of the Petitioner's rights.

Third National Bank of Circleville v. Speakman, (1985), 18 Ohio St. 3d 119. Does prevent appeals from judgments that are time barred. However, Timmons was not attempting to challenge the Farm Credit Services judgment because it did appear to be correct. What was necessary was the right to have a review of the confirmation order because there was no judgment for RAK REE and there was no

Judgment Decree in Foreclosure for the second sale. The first "order of sale" was a fraud and would be void from its inception. A void judgment cannot be confirmed and a sale based upon a void judgment is itself void. 64 O Jur 3d *& 644.

CONCLUSIONS

Once the Debtor was dismissed from bankruptcy without confirmation of a plan of reorganization or discharge of debt, then that court loses jurisdiction over the person and would therefore lose jurisdiction over any judgment rendered in a case which was not discharged. The state law would need to prevail once this court lost jurisdiction. The RAK REE "judgment" rendered by the bankruptcy in the face of dismissal cannot then be accepted. It also is a fraud.

The Petitioner now seeks relief in The Supreme Court of the United States of America with this petition for a writ of certiorari. Due Process, guaranteed by the Fourteenth Amendment to the Constitution of the United States of America, was denied the Petitioner and the probability must be recognized that the Petitioner was also denied equal protection" of the law with the fixing of an exorbitant bond.

The fraud in attempting to prevent a judgment and to reward RAK REE an unjust reward must alo be contemplated. This creditor did have the right to collect his debt; they did not have the right to prosecute a fraudulent claim. The Petitioner asks that relief be granted and justice returned to a small part of his life and world. Reverse the order of confirmation and remand the case for a proper determination based upon the evidence. Judicial infringement on constitutional rights and the attempt to bully what a court thought was permissible should not be tolerated. RAK REE received a very good return on their investment

and if the Petitioner had not been at the sale that transferred the property to his possession, they would have been poorer by far.

Respectfully Submitted,

John Timmons

10375 US Rt 23

Lockbourne, Ohio 43137

(614) 983-3654

SUPREME COURT OF OHIO

1997 TERM

Rak-Ree Enterprises, Inc.,
Appellee,

Case No. 97-1040

V.

ENTRY

John Caldwell Timmons,
Appellant.

Upon consideration of the Jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:
Docket Fee, $40.00, paid by John Caldwell Timmons.

(Pickaway County Court of Appeals; No. 96CA46)

/S/ Thomas J. Moyer
Thomas J. Moyer
Chief Justice

Filed September 3, 1997

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

Rak-Ree Enterprises, Inc.

Plaintiff-Appellee,
No. 96 CA 46
V. ENTRY

John Caldwell Timmons,

Defendant-Appellant.

The Notice of Appeal in this case was filed on December 27,1996. Appellant, John Timmons, states that he is appealing the trial court's order of confirmation issued on June 26, 1995. On January 13, 1997, this court put on a fifteen day entry ordering Timmons to address whether the order appealed from is a final appealable order. All parties responded by filing memoranda.

An order confirming a sale is not the order from which a party must appeal. Rather, the actual order of sale is the final appealable order. Third Nat. Bank of Circlevile V. Speakman (1985), 18 Ohio St.3d 119 and Oberlin Savings Bank Co. V. Fairchild (1963), 175 Ohio St. 311. Timmons did appeal the order of sale in 1995, case No 95 CA 5, but later dismissed the appeal when his land was sold.

This is the fifth appeal filed by appellant, three of which, 94CA8, 94CA10 and 94CA14, were decided by this

court in Rak-Ree V. Timmons (1995), 101 Ohio App.3d 12 and the fourth, which was an appeal from the order of sale, 95 CA 5, was voluntarily dismissed by Timmons.

Timmons also filed a Motion for Instructions asking this court to order the Pickaway County Clerk of Courts to give him a time-stamped copy of the docket. We note that the docket is not a filing but rather a list of The filings made in a case. Only documents which are filed in a case are filed-stamped. Timmons' Motion for Instructions is DENIED.

Upon consideration this court finds that the order appealed from is riot a final appealable order pursuant to Third Nat. Bank of Cirdeville and Oberlin Savings Bank, supra. As such, this court has no jurisdiction to consider appellant's appeal.

Rak-Ree requested attorney fees and costs pursuant App.R. 23 asserting that Timmons' appeal is frivolous.

In Parks V. Baltimore & Ohio Railroad (1991), the Eighth District Court of Appeals stated:

> "'A frivolous appeal under App.R. 23 is essentially one which presents no reasonable question for review." Talbott v. Fountas (1984), 16 Ohio App.3d 226 * * *. There is no basis for finding that no reasonable [question]was presented for review when an appeal is dismissed without any consideration of the merits. Id.

In the instant case, we did reach the merits because we lack jurisdiction."

Here, this court is dismissing this matter for lack of jurisdiction and have not reached the merits of this case. Upon consideration, this court, adopting the rationale of the Eighth District in Parks, supra, finds that Rak-Ree's Motion is not well taken and it is therefore, DENIED.
APPEAL DISMISSED. Costs to appellant.
Abele, J. and Stephenson, J.: Concur

/s/ Roger K. Kline
Roger~Kline, Administrative Judge

Filed April 7, 1997

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

RAK REE ENTERPRISES, Inc.

v. Case No. 86-CI-337
ORDER OF CONFIRMATION

JOHN CALDWELL TIMMONS

This matter comes on for hearing upon the motion of Cross-C1aimant, Farm Credit Services of Mid-America, ACA, for an Order confirming the sheriff's sale held in this matter on May 9, 1995, said sale having been ordered upon remand from the Court of Appeals for the Fourth District

after that Court reversed this Court's previous Order of Confirmation and Distribution entered May 19, 1994.

It is found that the State of Ohio, Department of Natural Resources, as successor in interest to the purchaser of the property at the original sheriff's sale, Wildlife Conservation Fund of America, Inc., Trustee, also purchased the property for the sum of One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00) at the May 9, 1995 sheriff's sale.

It is further found that the State of Ohio, Department of Natural Resources, as said successor to the original purchaser and pursuant to R. C. 2329.46, has a lien upon the property to the extent of the money paid and applied to the debtor, Defendant John Caldwell Timmons, at the original sale in the amount of Two Hundred Five Thousand and 00/100 Dollars ($205,000.00) and that the State of Ohio, Department of Natural Resources is subrogated to the rights of the creditors against the debtor, Defendant John Caldwell Timmons, to the extent of such money paid and applied to said debtor's benefit.

It is further found that the Sheriff of Pickaway County, Ohio has produced his return of the sale and that the sale is in all respects in conformity with law and the orders of this Court.

It is therefore ORDERED that said proceedings and the sale be and they are hereby approved and confirmed.

It is further ORDERED and DECREED that the Sheriff convey to the purchaser, State of Ohio, Department of Natural Resources, a deed for the real estate as provided by law.

It is further ORDERED and DECREED that said purchaser is hereby subrogated to all rights of the parties in this action to the extent necessary for the protection of its

title; and that a Writ of Possession is awarded to put the State of Ohio, Department of Natural Resources in possession of the real estate.

It is further ORDERED and DECREED that, pursuant to R. C. 2329.46, the State of Ohio, Department of Natural Resources is hereby subrogated to the rights of Plaintiff RAK-REE Enterprises, Inc. and Cross-claimant Farm Credit Services of Mid-America, ACA in the amount of thirty-Thousand and 00/100 Dollars ($30,000.00) which represents the difference between the purchase price paid at the original sale and applied to the debtor's benefit, Two Hundred Five Thousand and 00/100 Dollars ($205,000.00), and the purchase price paid at the May 9, 1995 sheriff's sale, One Hundred and Seventy-Five Thousand and 00/100 Dollars ($175,000.00).

It is further ORDERED that the Clerk of this Court, to the extent not previously done by any prior order of this court, cause the release and satisfaction of the following encumbrances insofar as they apply to the real estate which is the subject matter of this action without, however, affecting said encumbrances as to other real estate to which they may apply:

1. Mortgage from John Caldwell Timmons to RAK-REE Enterprises, Inc., dated May 18, 1979 and of record in Mortgage Volume 253, Page 165.

2. Mortgage from John Caldwell Timmons to Columbus production Credit Association, dated May 18, 1979 and of record in Mortgage Volume 253, Page 169.

3. Mortgage from John C. Tim mons to Columbus Production Credit Association, dated April 30, 1982 and of record in Mortgage Volume 271, Page 618.

4. Certificate of premium due Ohio Bureau of Workers Compensation, dated June 27, 1983 and of record at Mortgage Volume 278, Page 628.

5. Certificate of Judgment in favor of Ohio Bureau of Workers Compensation which is of record at Judgment Docket 4, Page 314.

It is further ORDERED that the Certificates of Judgment of the Plaintiff, RAK-REE Enterprises, Inc. and the Cross-claimant, Farm Credit Services of Mid-America, ACA, shall not be liens upon the real estate sold.

It is further ORDERED that the following Certificates of Judgment were filed after Defendant John Caldwell Timmons was served with a Summons and copy of the Complaint in this matter and therefore said Certificates of Judgment are barred from being liens upon the subject premises by the doctrine of lis pendens:

Certificate of Judgment in favor of Internal Revenue Service filed February 14, 1994 at 2:28 p.m. and of record at Judgment Docket 7, Page 628.

Certificate of Judgment in favor of Internal Revenue Service filed February 14, 1994 at 2:29 p.m. and of record at Judgment Docket 7, Page 629.

The successful bid of the purchaser, State of Ohio, Department of Natural Resources, being less than the purchase price paid at the original sheriff's sale, there are no further sale proceeds to distribute.

/s/ P.Randall Knece
JUDGE P. RANDALL KNECE

Filed June 26, 1995

IN THE COURT OF COMMON
PLEAS,PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.
Plaintiff,

Case No. 86-CI-337
JUDGMENT ENTRY

v.

JOHN CALDWELL TIMMONS, et al.
Defendant.

This cause came on for hearing on November 23, 1992 upon the Motion for Default Judgment of Production Credit Association of the Fourth District, now Farm Credit Services of Mid-America, ACA, on its Cross-claim against Defendant, John Caldwell Timmons; notice of said hearing having been served upon all parties and the Defendant, John CaLdwell Timmons, having failed to plead in response to movant's Cross-Claim, said Defendant not being a minor, incompetent or in the military, the Court therefore finds said mofion well taken.

It is therefore ORDERED, ADJUDGED and DECREED that the Defendant, Farm Credit Services of Mid-America, ACA, is granted judgment against the Defendant, John Caldwell Timmons, in the amount of One Hundred Thirty Thousand Two Hundred Seventy-One and 85/100 Dollars ($130,271.85) plus interest after the 6th day of April, 1993 and costs herein expended.

It is further ORDERED that Farm Credit Services of Mid-America, ACA shall have the right to foreclose the lien

of its mortgage upon the real estate which is the subject matter of this action.

This is a final appealable order and the Clerk shall serve notice to the patties as provided for by Civil Rule 58.

/s/ William Ammer
Dated: April 7, 1993 JUDGE

IN THE COURT OF COMMON PLEAS,
PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.
Plaintiff,

Case No. 86-CI-337

V.

JUDGMENT DECREE IN FORECLOSURE

JOHN CALDWELL TIMMONS, et al.
Defendant.

Cross-claimant, Farm Credit Services of Mid-America, ACA, was granted judgment in this matter on April 7, 1993 against Defendant, John Caidwell Timmons, in the amount of One Hundred Thirty Thousand Two Hundred Seventy-One and 85/100 Dollars ($130,271.85) plus interest accruing after April 6, 1993 and that the lien of its

mortgage upon the real estate Which is the subject matter of this action be forciosed.

Upon the evidence, pleadings and the record in this matter, the Court further finds as follows:

The Plaintiff, Rak-Ree Enterprises, Inc. filed its Complaint on July 21, 1986. Defendants, John CaLdwell Timmons, Ohio Bureau of Employment Services and Bank One, Columbus, NA, have entered appearances.

Defendant, Ohio Bureau of Employement Services, has disclaimed any interest in the real property which is the subject matter of this action. Defendant, Bank One, Columbus, NA, claimed a security interest in growing crops but said interest appears to have been extinguished.

The interest of Defendant, Treasurer of Pickaway County, Ohio is specified by Ohio Revised Code *_5719.01.

There is now due and owing to Plaintiff on the mortgage promissory note executed by Defendant, John Caldwell Timmons, the sum of One Hundred Thirty Thousand Two Hundred Seventy-One and 85/100 Dollars ($130,271.85), plus interest at an adjustable rate of accruing after April 6, 1993.

That in order to secure the obligations of said promissory note, Defendant, John Caldwell Timmons, on April 30, 1982, executed and delivered to Cross-claimant's predecessor in interest a mortgage conveying conditionally to Cross-claimant the real estate set forth therein located in Harrison Township, Pickaway County, Ohio. This mortgage was filed for record with the Recorder of Pickaway County, Ohio and is of record in Mortgage Volume 271, Page 618 of

said county records and is a valid and subsisting lien upon the real estate described therein.

Since the filing of its Cross-claim, Farm Credit Services has released 1.3774 acres from the operation and effect of its mortgage. After the filing of its Complaint, the Plaintiff, Rak-Ree Enterprises, Inc., acquired title to a 24.3064 acre parcel and a 9.70 acre parcel which were originally subject to its mortgage and which remain subject to the mortgage of Farm Credit Services of Mid-America, ACA. Rak-Ree Enterprises, Inc. and Farm Credit Services of Mid-America, ACA are currently negotiating an agreement regarding the real estate now owned by Rak-Ree Enterprises, Inc. and said real estate will not be sold at this time.

The property subject to the mortgage of Cross-claimant, Farm Credit Services of Mid-America, ACA, which is to be sold by the Sheriff is described as follows:

Parcel One: Being 198.4306 acres located in Harrison Township, Pickaway County, Ohio and more fully described on the attached Exhibit '1A'1. (Originally 233.884 acres excepting 1.3774 acres; excepting 24.3060 acres; and excepting 9.770 acres).

The mortgage lien of Farm Credit Services of Mid-America, ACA on Parcel One is subject to the prior mortgage lien of the Plaintiff, Rak-Ree Enterprises, Inc., and the lien of the Treasurer of Pickaway County, Ohio for unpaid real estate taxes.

The mortgage of Farm Credit Services of Mid-America, ACA contains the condition that if the Mortgagor, John Caldwell Timmons, defaults in the payment of said indebtedness, then the Cross-claimant shall have the right to foreclose; there has been a default in payment on said

mortgage promissory note in accordance with the terms and tenure thereof, and accordingly the condition of defeasance in said mortgage was broken and said mortgage thereby became absolute and Cross-claimant is entitled to have said mortgage foreclosed, the equity of redemption of the Defendant, John Caldwell Timmons, in Parcel One forever cut off, barred and foreclosed, said parcel sold and the proceeds applied in payment of the aforementioned amount found to be due and owing to Cross-claimant, according to its priority.

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED, that the mortgage of Cross-claimant, Farm Credit Services of Mid-America, ACA, is a valid and subsisting lien upon the premises described in said mortgage; that Cross-claimant's mortgage and the lien thereof be foreclosed; that unless Defendant, John Caidwell Timmons, pays or causes to be paid the costs of this action and the amounts aforesaid found to be due and owing to Cross-claimant within three (3) days after filing this decree, the equity of redemption of said Defendant in the real estate to which he holds tide shall be cut off, barred and foreclosed, and said real estate sold free and clear of any lien, claim or interest of Cross-claimant, Plaintiff or the Defendants of whatever nature or kind, and for an Order of Sale to be issued to the Sheriff of Pickaway

County, Ohio, directing him to appraise, advertise and sell said real estate according to law and the Orders of this Court, and report these proceedings to this Court and await further Orders of this Court.

Date: June 18, 1993 /s/ William Ammer
JUDGE

IN THE COURT OF COMMON PLEAS,
PICKAWAY COUNTY, OHIO

No. 86-CI-337
AGREED ENTRY

RAK-REE ENTERPRISES, INC.
Plaintiff,

V.

JOHN CALDWELL TIMMONS, et al.
Defendant.

This Agreed Entry is made by and between the Plaintiff, RAK-REE Enterprises, Inc.,and Cross-Claimant, Farm Credit Services of Mid-America, ACA. The purpose of this Agreed Entry is to establish priority for the distribution of proceeds from the Sheriff Sale of the real estate which is the subject matter of this action and to provide for the release from Cross-Claimant's mortgage of certain property now owned by the Plaintiff.

At the time this action was initiated, the mortgages of the Plaintiff and the Cross-Claimant covered 233.884 acres. Defendant, John C. Timmons, subsequently conveyed tracts of 24.3060 acres and 9.770 acres out of the 233.884 acre parcel to the Plaintiff. These conveyances were made while Defendant Timmons was under the jurisdiction of the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division in Case No.2-86-05021, In re: John C. Timmons. Defendant Timmons neither notified Cross-

Claimant of his conveyances nor disclosed the existance of Cross-Claimant's mortgage to the Plaintiff.

Plaintiff now wishes to obtain the release of the 24.3060 acre and 9.770 acre tracts from the operation and effect of Cross-Claimant's mortgage. Cross-Claimant desires to obtain consideration for the release of said tracts which are a portion of the collateral securing payment of the amount due it.

Cross-Claimant does hereby agree to release the 24.3060 acre and 9.770 acre tracts from its mortgage. In consideration of Cross-Claimant's agreement to release, the Plaintiff hereby agrees to partially subordinate its first mortgage claim on the 198.4306 acre parcel scheduled for Sheriff Sale on Tuesday, March 29, 1994, said subordination to be in favor of Cross-Claimant's second mortgage claim. The subordination shall be implemented by sale proceeds being distributed and disbursed as follows:

a. Sale proceeds shall first be disbursed in payment of court costs, real estate taxes, conveyance fee, poundage and any other administration costs having priority over mortgage indebtedness.

b. Sale proceeds next shall be disbursed to Plaintiff, RAK-REE Enterprises, Inc., in the amount of Seventy-Five Thousand Dollars ($75,000.00).

c. Sale proceeds shall thereafter be disbursed to Cross-Claimant, Farm Credit Services of Mid-America, ACA, in the amount of One Hundred Forty-One thousand Six Hundred Eighty-Seven and 07/100 Dollars ($141,687.07) being the balance due Cross-Claimant as of the date of sale, March 29, 1994.

d. Sale proceeds after payment to Cross-Claimant shall be disbursed to the Plaintiff to the extent required to pay Plaintiff in full if adequate sale proceeds exist.

March 29, 1994 /s/ William Ammer
JUDGE WILLIAM

UNITED STATES BANKRUPTCY COURT
SOUTRERN DISTRICT OF OHIO
EASTERN DIVISION

In re
John Caidwell Timmons, Caldwell)
Debtor.

Case No. 93-54857
Chapter 12 (Judge

SSAN 285-44-3009

ORDER ON CIAIM OF RAK-REE ENTERPRISES. INC.

A hearing was held December 13, 1993, to determine the amount owed by the above-referenced Debtor to the Creditor, RAK--REE Enterprises, Inc. After testimony and oral arguments, the Court finds that the Debtor is indebted to this Creditor in the amount of $120,000.00.

IT IS SO ORDERED.

Dated: JAN 7 1994 /s/ Charles M. Caldwell

Charles M. Caldwell
United States Bankruptcy
Judge

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

CASE NO. 86~CI-337

RAK-REE EN'IERPRISES, INC.
PLAINTIFF

-V-

JOHN CALDWELL TIMMONS
DEFENDANT

PIATINTIFF RAK-REE ENTERPRISES. INC.'S
MOTION FOR DEFICIENCY .JUDGMENT

Now comes the Creditor, Rak-Ree Enterprises, Inc. (hereinafter Rak-Ree) and moves this Court for a Deficiency Judgment in the amount of $45,000.00 against Defendant

John C. Timmons. Plaintiff is entitled to a Deficiency Judgment in this amount since the value of Plaintiff's secured claim is $120,000.00 (See Exhibit A Order of U.S. Bankruptcy Court in Case No.93-54857). Rak-Ree stands to receive only $75,000.00 from the foreclosure sale of Defendant's farm real estate. (See Agreed Foreclosure Entry filed M&ch 29, 1994 Exhibit B).

WHEREFORE, for the foregoing reasons, Plaintiff Rak-Ree moves this Court for a Deficiency Judgment against Defendant John Caldwell Timmons in the amount of $45,000.00.

Respectfully submitted,

WRIGHT & LOGAN Co., LPA
4266 Tuller Road, Suite 101
Dublin, Ohio 43017
(614) 791-9112

/s/ J. Anthony Logan
Attorney for Rak-R e Enterprises, Inc.

IN ThE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

CASE NO. 86-CI-337

RAK-REE ENTERPRISES, INC.
PLAINTIFF

-V-

JOHN CALDWELL TIMMONS, et al.,
DEFENDANTS

This matter is before the Court on Plaintiff Rak-Ree Enterprises, Inc.'s Motion for Deficiency Judgment. It appears to the Court that the claim of Rak-Ree Enterprises has been established by the United States Bankruptcy at $120,000.00 by Order dated January 7, 1994. It further appears that proceeds allocated to Plaintiff Rak-Ree Enterprises from the March 29, 1994 Sheriff's Sale will equal $75,000.00.

Therefore it is ORDERED, adjudged and decreed that Plaintiffs Rak-Ree Enterprises, Inc. are hereby granted a Deficiency Judgment against John Caidwell Timmons in the amount of $45,000.00. Plaintiffs may proceed forthwith to collect upon said judgment as authorized by law.

Dated: April 14, 1994 /s/ William Ammer
Judge William Ammer

IN THE COURT OF COMMON PLEAS,
PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.
Plainfiff,

Case No. 86-CI-337

V.

JOHN CALDWELL TIMMONS, et al.
Defendants.

ORDER OF CONFIRMATION
AND DISTRIBUTION

Upon motion of the Cross-Claimant, Farm Credit Services of Mid-America, ACA, herein, and upon its producing the return of the Sheriff of Pickaway County, Ohio, of the sale made pursuant to former Order of this Court, and on careful examination of the proceedings of the Sheriff, being satisfied that the same have been had in all respects in conformity to law and the Orders of the Court, it is Ordered that said proceedings and the sale be and they are hereby approved and confirmed.

It is further Ordered and Decreed that the Sheriff convey to the purchaser, Wildlife Conservation Fund of America, Inc., Trustee, assignee of Ducks Unlimited, Inc.,

the successful bidder at the sheriff sale, and that said purchaser is hereby subrogated to all the rights of the parties in this suit in said real estate for the protection of their title; and a Writ of Possession against the parties in possession is awarded to put said purchaser in possession of the real estate.

It is further Ordered that the Clerk of this Court cause release and safisfacfion of the following mortgages on the records thereof in the Office of the Recorder of Pickaway County, Ohio:

Mortgage from John Caldwell Timmons to RAK-REE Enterprises, Inc., dated May 18, 1979 and of record in Mortgage Volume 253, Page 165.

Mortgage from John Caldwell Timmons to Columbus Production Credit Asssociation, dated May 18, 1979 and of record in Mortgage Volume 253, Page 169.

Mortgage from John C. Timmons to Columbus Production Credit Association, dated April 30, 1982 and of record in Mortgage Volume 271, Page 618.

It is further Ordered that the Clerk of this court cause to be released the following lien insofar as it applies to the real estate which is the subect matter of this action:

Certificate of premium due Ohio Bureau of Workers Compensation, dated June 27, 1983 and of record at Mortgage Volume 278, Page 628.

It is further Ordered that the Clerk also cause to be released the following Certificate of Judgment insofar as it

applies to the real estate which is the subject matter of this action:

Certificate of Judgment in favor of Ohio Bureau of Workers Compensation which is of record at Judgment Docket 4, Page 314.

It is further Ordered that the following Certificates of Judgment were filed after the Defendant, John Caldwell Timmons, was served with a Summons and copy of the Complaint in this matter and therefore said Certificates of Judgment are barred from being liens upon the subject premises by the doctrine of lis pendens:

Certificate of Judgment in favor of Internal Revenue Service filed February 14, 1994 at 2:28 p.m. and of record at Judgment Docket 7, Page 628.

Certificate of Judgment in favor of Internal Revenue Service filed February 14, 1994 at 2:29 p.m. and of record at Judgment Docket 7, Page 629.

And the Court, coming now to distribute the proceeds of said sale in the amount of Two Hundred Five Thousand and 00/100 Dollars ($205,000.00), it is Ordered that the Sheriff of Pickaway County, Ohio, out of the money in his hands pay the following:

To the Treasurer of Pickaway County, Ohio as and for taxes currenfly due and payable on Parcel No. D1200030031200 the sum of Four Hundred Fifty and 63/100 Dollars ($450.63).

To the Clerk of Courts of Pickaway County, Ohio, the costs of this action in the amount of Six Thousand Eight Hundred Seventy-Two and 74/100 Dollars ($6,872.74).

To the Plainfiff, RAK-REE Enterprises, Inc., the sum of Seventy-Five Thousand Dollars ($75,000.00) pursuant to the Agreed Entry between RAK-REE Enterprises, Inc. and Farm Credit Services of Mid-America, ACA entered in this matter on March 29,1994, as satisfaction of its mortgage lien and in partial payment of the amount due it.

To Cross-Claimant, Farm Credit Services of Mid-America, ACA the sum of One Hundred Twenty-Two Thousand Six Hundred Seventy-Six and 63/100 Dollars ($122,676.63).

It appearing to the Court that the distribution to Cross-Claimant, Farm Credit Services of Mid-America, ACA, will be inadequate to satisfy the judgment in its favor, a deficiency judgment will be, and hereby is, awarded to Farm Credit Services of Mid-America, ACA against Defendant, John Caldwell Timmons, in the amount of Nineteen Thousand Ten and 44/100 Dollars ($19,010.44) plus interest accruing from March 30, 1994. A deficiency judgment in the amount of $45,000.00 has been granted to Plainfiff, RAK-REE Enterprises, Inc., by Order of April 14, 1994.

/s/ William Ammer
JUDGE WILLIAM AMMER

Dated: May 12, 1994

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

RAK-REE ENTERPRISES, INC.,
Plaintiff-Appellee,

vs.

JOHN CALDWELL TIMMONS,
Defendant-Appellant.

And

FARM CREDIT SERVICES OF
MID-AMERICA, ACA,
Defendant-Appel lee

CASE NOS. 94-CA-8
94-CA-10
94-CA-14

DECISION
AND
JUDGMENT ENTRY

APPELLANT PRO SE: John Caldwell Timmons

COUNSEL FOR APPELLEE
RAK-REE ENTERPRISES: J. Anthony Logan

COUNSEL FOR APPELLEE
FARM CREDIT SERVICES

OF MID-AMERICA, ACA: John E. Bowers

—— This is a consolidated appeal from three Pickaway County Common Pleas Court judgments in a foreclosure action brought against John Caldwell Timmons, defendant below and appellant herein. In Case No. 94 CA 8, appellant appeals the Pickaway County Clerk of Court's March 29, 1994 order of sale directed to the Pickaway County Sheriff. In Case No. 94 CA 10, appellant appeals the trial court's April 14, 1994 deficiency judgment. In Case No. 94 CA 14, appellant appeals the trial court's May 19, 1994 order of confirmation and distribution.

Appellant assigns the following two errors in Case No. 94 CA 10, his appeal from the deficiency judgment:

FIRST ASSIGNMENT OF ERROR:

"PURSUANT TO RULE 7 OF THE OHIO RULES OF CIVIL PROCEDURE, AN APPLICATION TO THE COURT FOR AN ORDER SHALL BE BY MOTION WHICH,---, SHALL BE MADE IN WRITING."

SECOND ASSIGNMENT OF ERROR:

"THE JUDGMENT WAS MADE FOR THE PLAINTIFF IN VIOLATION OF THE MATERIAL FACTS IN THIS ACTION."

Appellant assigns the following four errors in Case No. 94 CA 14, his appeal from the order of confirmation and distribution:

FIRST ASSIGNMENT OF ERROR:

"THE WRONG DATE WAS ADVERTISED FOR THIS SALE. THE DATE ADVERTISED WAS FOR TUESDAY, MAY 28, 1993 BUT WAS ACTUALLY HELD TUESDAY, MAY 29, 1994."

SECOND ASSIGNMENT OF ERROR:

"A VALID JUDGMENT DID NOT EXIST FOR ONE OF THE CREDITORS AND NO CERTIFICATION WAS MADE THAT THERE WAS NO JUST REASON FOR DELAY PURSUANT TO THE CIVIL RULES OF PROCEDURE, RULE 54(B)."

THIRD ASSIGNMENT OF ERROR:

"THE ORDER OF SALE DID NOT HAVE THE SIGNATURE OF THE COURT."

FOURTH ASSIGNMENT OF ERROR:

THE ORDER OF SALE DID NOT HAVE A PROPER TIME STAMP TO INDICATE THE DATE OF ISSUE FOR THE ORDER."

Appellant did not file a brief in Case No. 94 CA 8, his appeal from the clerk of court's order of sale. We note, however, that appellant's last two assignments of error in Case No. 94 CA 14 relate to the clerk of court's order of sale.

Rak-Ree Enterprises, Inc., plaintiff below and appellee herein (hereinafter Rak-Ree), commenced this foreclosure action more than eight years ago on July 21, 1986. Defendants in the action included appellant and holders of interests in the land. On April 7, 1993, Defendant

Columbus Production Credit Association won a cross-claim against appellant for $130,271.85.

Farm Credit Services of Mid-America, ACA, (hereinafter Farm Credit Services) now holds the interest and position formerly held by Columbus Production Credit Association in this action.

Appellant's bankruptcy actions stayed the proceedings in this action on three occasions. On June 18, 1993, the trial court entered a judgment decree in foreclosure. The decree provided in pertinent part as follows:

> "There is now due and owing to Plaintiff on the mortgage promissory note executed by Defendant, John Caldwell Timmons, the sum of One Hundred Thirty-Thousand Two Hundred Seventy-One and 85/100 Dollars ($130,271.85), plus interest at an adjustable rate of accruing after April 6, 1993.
>
> NOW ThEREFORE, it is ORDERED, ADJUDGED and DECREED, * * * that unless Defendant, John Caldwell Timmons, pays or causes to be paid the costs of this action and the amounts aforesaid found to be due and owing * * *, the equity of redemption of said Defendant in the real estate to which he holds title shall be cut off, barred and foreclosed, and said real estate sold free and clear of any lien, claim or interest of Cross- claimant, Plaintiff or the Defendants of whatever nature or kind, and for an Order of Sale to be issued to the Sheriff of Pickaway County, Ohio, directing him to appraise, advertise and sell said real estate according to law * * * ."

On April 4, 1994, the Pickaway County Clerk of Courts issued an order of sale directing the Pickaway County Sheriff to appraise, advertise, and sell the land in question. The sheriff's return on the order of sale indicated that the appraisers valued the land at $200,000 and the sheriff sold the land for $205,000 on March 29, 1994.

Five days prior to the sheriff's sale, appellant filed a motion requesting the trial court to stay the sale. Appellant noted that advertisements of the sale incorrectly stated that the sale would be held on Tuesday, March 28, 1993. Appellant argued that the incorrect advertisement would "understandably confuse potential buyers and would ultimately affect the price which might be realized from the sale."

One day prior to the sheriff's sale, appellant filed a motion requesting the trial court to stay the sale pending appellant's appeal of his bankruptcy case. Appellant specifically noted that he is appealing the bankruptcy court's award of $120,000 to Rak-Ree. Appellant claimed that in light of his bankruptcy appeal, Rak-Ree's $120,000 claim cannot be considered to be a valid claim.

On April 14, 1994, approximately two weeks after the sheriff's sale, Rak-Ree filed a motion for a $45,000 judgment. In the motion, Rak-Ree noted that the bankruptcy court valued its secured claim at $120,000, but pursuant to a March 29, 1994 agreed entry between Rak-Ree and Farm Credit Services, Rak- Ree will receive only $75,000 from the sheriff's sale. Later that day, the trial court granted Rak-Ree a $45,000 deficiency judgment

On April 18, 1994, appellant filed copies of advertisements for sale of the land in guestion. Appellant noted that the first three advertisements incorrectly indicated that the sale would be held on Tuesday, March 28, 1993. The last advertisement incorrectly indicated that the sale would be held on Tuesday, March 29, 1993. The sale was held on Tuesday, March 29, 1994.

On May 12, 1994 Farm Credit Services filed a motion for an order confirming the March 29, 1994 sheriff's sale and distributing the proceeds of the sale. On May 19, 1994, the trial court held a hearing on the motion. At the hearing, appellant argued that the advertisements listed the incorrect date for the sheriff's Bale. Appellees noted that the property nevertheless sold in excess of its appraised value. Appellees further noted that there was no evidence that anyone who came to the courthouse on Monday, March 28, 1994 and heard the sheriff announce that the sale would be held the next day, did not return the next day to bid on the property. After the hearing, the trial court entered an order of confirmation and distribution.

Appellant filed notices of appeal from the clerk of court's March 29, 1994 order of sale, the trial court's April 14, 1994 deficiency judgment, and the trial court's May 19, 1994 order of confirmation and distribution.

I

A

In his third assignment of error in Case No. 94 CA 14, addressing the March 29, 1994 order of sale, appellant asserts the trial court did not sign the order of sale. Appellant argues that without the trial court's signature, the order of sale is not a valid court order.

We agree that the Pickaway County Clerk of Court's March 29, 1994 order of sale directed to the Pickaway County Shefiff did not include the trial court's signature. The order, however, was not an order of the court and thus did not require the trial court's signature. The clerk of courts issued the order in compliance with the trial court's June 18, 1993 judgment decree of foreclosure. In that decree, the trial court directed "an Order of Sale to be issued to the Sheriff of Pickaway County, Ohio, directing him to appraise, advertise and sell said real estate according to law."

Accordingly, based upon the foregoing reasons, we overrule the third assignment of error in Case No. 94 CA 14 and we dismiss the appeal in Case No. 94 CA 8 from the clerk of court's March 29, 1994 order of sale.

B

In the fourth assignment of error in Case No. 94 CA 14, appellant asserts that the order of sale did not have a proper time stamp to indicate the date of issue.

First, we once again note that the order of sale was not a court order, but rather was an order of the clerk of courts directed to the sheriff in compliance with the trial court's judgment decree of foreclosure. Second, we note appellant cites no authority that would reguire the clerk of courts to place a time stamp on the order of sale at the time the clerk issues the order. The order of sale already includes the date the clerk issued it, the date the sheriff received it, the various dates the sheriff executed the order, and time stamps indicating the receipt date and the return date.

Accordingly, based upon the foregoing reasons, we overrule appellant's fourth assignment of error in Case No. 94 CA 14.

II

A

In his first assignment of error in Case No. 94 CA 14 (the appeal from the order of confirmation and distribution), appellant asserts that the wrong date was advertised for this sale. Appellant contends that although the sheriff advertised the sale for Tuesday, May 28, 1993, the sheriff actually held the sale on Tuesday, May 29, 1994.

We agree with appellant that the trial court abused its discretion by confirming the sale under the circumstances of this case. The advertisements incorrectly listed the date of the sale. R.C. 2329.26 requires the sheriff to give public notice of the time and place of sale:

Lands and tenements taken in execution shall notbe sold until the officer taking them gives public notice of the time and place of sale, for at least thirty days before the day of sale, by advertisement in a newspaper * * * (Emphasis added.)

In Mellon Fin. Serv. v Russell (Mar. 1, 1991), Ashtabula App. No. 90-A-1514, unreported, the court recognized the importance of advertising the time and place of the sale. The court wrote in pertinent part as follows:

"In Transamerica Financial Services V. Fitzgerald (Mar. 1, 1982), Geauga App. No. 987, unreported, this court stated that the primary purpose of publication is to give notice of the proposed sale. Under this

standard, the crucial data which the notice must contain is the time and place of the sale and the identity of the property."

We note that R.C. 2329.27 specifies that all sales made without proper advertisement "shall be set aside."

R. C. 2329.31 provides that trial courts shall confirm a sale if the sale was made in conformity with R.C. 2329.01 through R.C. 2329.61:

Upon the return of any writ of execution for the satisfaction of which lands and tenements have been sold, on careful examination of the Droceedings of the officer making the sale, if the court of common pleas finds that the sale was made. in all respects in conformity with sections R.C. 2329.01 to 2329.61, inclusive, of the Revised Code, it shall direct the clerk of the court of common pleas to make an entry on the journal that the court is satisfied of the legality of such sale, and that the officer make to the purchaser a deed for the lands and tenements."

(Emphasis added.)

The statute requires a careful examination of the proceedings leading to the sale, and requires assurance that the sale was made, in all respects, in conformity with the statutes.

If the trial court abuses its discretion by confirming an improper sale, we must reverse the confirmation. Ohio Savings Bank V. Ambrose (1990), 56 Ohio St.3d 53, 55, 563 N.E.2d 1388, 1389. In Union Bank Co. V. Brumbauah (1982), 69 Ohio St.2d 202, 208, 431 N.E.2d 1020, 1025, the court wrote in pertinent part as follows:

[T]he officer must give public notice of the time and place of sale for at least 30 days before the sale by advertisement in a newspaper published in and of general circulation in the county. R.C. 2329.26. The land cannot be sold for less than two thirds of the appraised value. R.C. 2329.20. There is no statutory dictate that a hearing must be held at this time. If the court, after examining the proceedings taken by the officers, finds the sale was made in conformance with R.C. 2329.01 to 2329.61, inclusive, it shall confirm the sale. R.C. 2329.31. Where the trial court abuses its discretion in confirming the sale. a reviewing court will reverse that decision. * * * ."

Because the sale in the case sub judice did not conform to the applicable statutes in all respects, we must reverse the trial court's decision confirming the sale.

Accordingly, based upon the foregoing reasons, we sustain the first assignment of error in Case No. 94 CA 14.

B

In his second assignment of error in Case No. 94 CA 14, appellant asserts that the trial court failed to include the Civ.R. 54(B) language "no just reason for delay" in the final judgment. Appellant claims the language is necessary because there was no valid judgment for Rak-Ree."

We disagree with appellant. Neither the trial court's June 28, 1993, judgment decree in foreclosure nor the trial court's May 19, 1994 order of confirmation and distribution neglected to adjudicate Rak-Ree's rights in the case sub judice.

Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error in Case No. 94 CA 14.

III

A

In his first assignment of error in Case No. 94 CA 10 (the appeal from the deficiency judgment), appellant asserts that the trial court erred by awarding the deficiency judgment without notice and a hearing. Rak-Ree agrees ~hat the trial court issued the deficiency judgment on the same day Rak-Ree filed the motion requesting the judgment. Rak-Ree, however, argues that the deficiency judgment did not become a final appealable order until the trial court filed the order of confirmation and distribution on May 19, 1994. Rak-Ree further argues that appellant failed to oppose the motion prior to May 19, 1994.

We agree with Rak-Ree that the deficiency judgment did not become a final appealable order until the trial court filed the order of confirmation and distribution on May 19, 1994. We also agree with Rak-Ree that appellant failed to oppose the motion prior to that date. We note the record contains no evidence that the trial court erred by granting the deficiency judgment in favor of Rak-Ree.

Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error in Case No. 94 CA 10.

B

In his second assignment of error in Case No. 94 CA 10, appellant asserts the trial court entered the deficiency judgment "in violation of the material facts in this action." In particular, appellant asserts the trial court should not have relied upon the bankruptcy court's judgment that Rak-Ree's claim is worth $120,000. Appellant notes that since the bankruptcy court's judgment, over $102,000 "has been paid" to Rak-Ree.

We have reviewed the record and find no evidence that over $102,000 "has been paid" to Rak-Ree since the bankruptcy court's judgment setting Rak-Ree's claim at $120,000. As we discussed above, appellant failed to challenge the deficiency judgment prior to the date of the final appealable order in this case.

The record contains no evidence to support the argument appellant raises in this assignment of error.

Accordingly, based upon the foregoing reasons, we overrule the second assignment of error in Case No. 94 CA 10.

In light of our disposition of appellant's first assignment of error in Case No. 94 CA 14, we reverse the May 19, 1994 order of confirmation and distribution and we remand this cause for further proceedings.2 We note that depending upon the results of the public sale on remand, the trial court may need to amend the April 14, 1994 deficiency judgment.

1We note that although appellant argued during the proceedings below that he appealed the bankruptcy court's determination that the Rak-Ree claim was worth $120,000, appellant makes no similar argument on appeal. For that

reason, we may assume that appellant did not succeed in his bankruptcy appeal.

2.Upon remand the parties should be aware of R.C. 2329.46 which provides in pertinent part as follows:

> Upon the sale of property on execution, if the title of the purchaser is invalid by reason of a defect in the proceedings, he may be subrogated to the right of the creditor against the debtor to the extent of the money paid and applied to the debtor's benefit, and, to the same extent, may have a lien on the property sold, as against all persons, except bona fide purchasers without notice. This section does not require the creditor to refund the purchase money by reason of the invalidity of such sales.

JUDGMENT IN CASE NO. 94 CA 14 IS REVERSED. THE JUDGMENT IN CASE NO. 94 CA 10 IS AFFIRMED. AND THE APPEAL IN CASE NO. 94 CA 8 IS DISMISSED.

JUDGMENT ENTRY

It is ordered that the judgment in Case No. 94 CA 14 is reversed, the judgment in Case No. 94 CA 10 is affirmed, and the appeal in Case No. 94 CA 8 is dismissed. It is further ordered that appellant recover of appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal. It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Exceptions.

Stephenson, J., Grey, J. & Abele, J.: Concur in Judgment & Opinion

For the Court

By: /s/ Earl E. Stephenson
Earl E. Stephenson, Judge

By: /s/ Lawrence Grey
Lawrence Grey, Judge

By: /s/ Peter B. Abele
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 12, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

IN THE COURT OF COMMON PLEAS,
PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.

Plaintiff, Case No. 86-CI-337

V. PRAECIPE FOR ORDER OF SALE ON REMAND

JOHN CALDWELL TIMMONS, et al.
Defendant.

The Order of Confirmation and Distribution entered in this matter on May 19, 1994 having been reversed and this cause having been remanded for further proceedings, please issue an Order of Sale to the Sheriff of Pickaway County, Ohio instructing him to appraise and sell the parcel of 198.4306 acres located in Harrison Township, Pickaway County, Ohio and being that property more fully described on Exhibit NAN attached hereto. (Originally being a parcel of 233.884 acres excepting 1.3774 acres; excepting 24.3060 acres and further excepting 9.770 acres).

Further instruct the Sheriff to publish notice of said sale once each week for five consecutive weeks, with the first notice being published at thirty-one days prior to the date of sale.

The Sheriff of Pickaway County, Ohio is also to be directed to notify the office of John E. Bowers, Attorney for Plaintiff, with the date and time of sale immediately upon scheduling and to provide Plaintiff's attorney with a copy of the advertising immediately upon publication.

PARCEL # D-12-OOO-300-312-OO

Dated: February 13, 1995 /s/ John E. Bowers

John E. Bowers

IN THE COURT OF COMMON PLEAS
PICKAWAY COUNTY, OHIO

RAK-REE ENTERPRISES, INC.,
Plaintiff

vs. Case No. 86-CI 337

JOHN CALDWELL TIMMONS, et al
Defendants.

ORDER AND JOURNAL ENTRY ON
DEFENDANT'S MOTION TO STRIKE WRIT:
MOTION FOR STAY OF EXECUTION AND
MOTION FOR RELIEF FROM JUDGMENT

This matter came on for hearing on Defendant John Caldwell Timmons ("Defendant") Motion to Strike Writ for Lack of Jurisdiction, Motion for Stay of Execution and Motion for Relief from Judgment filed in the within matter. The parties appeared at hearing on October 3, 1997. Plaintiff Rak-Ree Enterprises, Inc.("Plaintiff') was represented by counsel. Defendant appeared pro Se.

Upon review of the Memoranda filed by the parties and upon consideration of the oral arguments at hearing, the

Court hereby finds that Defendant has failed to demonstrate a legal or factual basis for the granting of said Motions.

WHEREFORE, it is hereby ORDERED that Defendant's Motion to Strike Writ for Lack of Jurisdiction, Defendant's Motion for Stay of Execution and Defendant's Motion for Relief from Judgment under Rule 60(B) are hereby DENIED. Plaintiff may proceed forthwith to execute on its Judgment of Record in the within case.

SO ORDERED.

Dated: October 14, 1997 /s/ P. Randall Knece
Judge P.Randall Knece

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

RAK-REE ENTERPRISES, INC.,
Plaintiff-Appellee

vs.

No. 97-CA-24

JOHN CALDWELL TIMMONS, et al
Defendant-Appellant

Appellant, John Timmons, filed a Motion for Stay asking this court to stay the sale of some of his farm equipment being sold by Rak-Ree to satisfy a judgment taken by them. Rak-Ree filed a Memorandum in Opposition to the Stay.

Upon consideration, appellant's Motion for Stay is well taken. It is, therefore, ORDERED that the stay shall be effective immediately upon the filing with the Pickaway County Clerk of Courts a supersedeas bond or cash in the amount of $100,000.

Abele, J: Concurs
Kline, J.: Dissents

/s/ Earl E. Stephenson
Earl E. Stephenson,
Presiding Judge

November 19, 1997

LIST OF ALL PARTIES TO THE PROCEEDING BELOW

The parties to this appeal and the names and addresses of their attorneys are as follows:

Parties in Interest	REPRESENTATION
John Caldwell Timmons Defendant –Petitioner Box 10375, US Rt 23 Lockbourne, Ohio 43137 (614) 983-3654	John Caldwell Timmons 10375 U.S. Rt. 23 Lockbourne, Ohio 43137 (614) 983-3654
RAK-REE Enterprises Plaintiff-Respondent c/o Robert Johnson 5746 Jackson Pike Grove City, Ohio 43123 (614) 871-0092	J. Anthony Logan RAK REE Counsel Wright & Logan Co., LPA 4266 Tuller Road Dublin, Ohio 43017 (614) 791-9112
Farm Credit Services Cross-claimant-Respondent c/o John Carpenter P.O. Box 277 Washington C.H., Ohio 43160 (614) 335-2750	John E. Bowers Counsel for Farm Credit Services 233 North Court Street Circleville, Ohio 43113 (614) 477-1361
Elizabeth Timmons Estate Respondent C/o Ann Root 4200 Lyon Drive Columbus, Ohio 43220	Benjamin F. Suffron Martin, Pergram, and Browning Co., LPA 69 East Wilson Bridge Rd Box 6017 Columbus, Ohio 43085
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